

6 FAH-2 H-130 AUTHORITY

(TL: CORH-1; 08-21-1997)

6 FAH-2 H-131 DELEGATION OF PROCUREMENT AUTHORITY

(TL: CORH-1; 08-21-1997)

(State Only)

a. In contrast with commercial contracting, where a principal is bound by the "apparent authority" of one of its agents, the U.S. Government is bound **only** by an individual who has been delegated contracting authority and who acts within the limits of that authority. **This means that only a person who is formally designated as a Contracting Officer can solicit proposals, negotiate, award (sign), and change (modify) contracts on behalf of the U.S. Government.**

b. The Procurement Executive (A/OPE) appoints all Contracting Officers in the Department of State. This is done through the issuance of a Certificate of Appointment as a Contracting Officer.

c. The formal delegation of procurement authority, and the specific delineations of responsibility between contracting and requirements office personnel, are discussed in this handbook. Several important points must be emphasized here:

(1) Federal law provides that no contract or purchase on behalf of the United States will be made unless it is authorized by law and paid for with funds appropriated for that purpose.

(2) Persons delegated Contracting Officer authority are responsible for assuring that acquisitions are in fact authorized by law and that funding is appropriate and adequate for the purpose.

(3) **The COR is not authorized in any way to commit the U.S. Government.** The COR's role is to identify program requirements and the funds needed to acquire them. Any actions taken by a COR or any unauthorized person which obligates the Department to pay for goods and services require ratification before payment can be made. CORs can also be held personally liable for obligating the U.S. Government, or receive disciplinary/adverse action. (See 6 FAH-2 H-132).

6 FAH-2 H-132 UNAUTHORIZED COMMITMENTS

(TL: CORH-1; 08-21-1997)
(State Only)

a. Only a warranted Government Contracting Officer may create a legal U.S. Government contract. When a U.S. Government employee who is not a warranted Contracting Officer causes any person to deliver something of value to the U.S. Government in the absence of a proper contract, the result is called an **"unauthorized commitment"**. Unauthorized commitments are serious violations that may result in disciplinary action against the violator. CORs must be especially cautious when dealing with vendors to ensure that their actions do not constitute an unauthorized commitment.

b. Federal regulation provides that the contractor who delivered the goods or services in the absence of a legal contract shall not receive payment until the Department official with proper authority has approved the creation of a proper contract. The process of approving an unauthorized commitment by creating a legal contract is called a **"ratification"**. Within the Department of State, the head of the contracting activity may ratify actions up to \$1,000; the Procurement Executive must ratify all actions in excess of \$1,000. Ratification requires identification of the individual who made the unauthorized commitment.

c. The contractor is at risk for being reimbursed for any work performed unless and until the paperwork is approved with an express date that covers all previously performed work.

6 FAH-2 H-132.1 Ratification Process

(TL: CORH-1; 08-21-1997)
(State Only)

a. If delivery has begun and ratification is necessary, then, as required by DOSAR 601.602-3-70(a), the person who made the unauthorized commitment must submit a statement as indicated in 6 FAH-2 H-132 Exhibit H-132.1 to the contracting office assigned the ratification action.

b. If the person who made the unauthorized commitment is no longer available to attest to the circumstances of the action, an officer from the responsible office shall provide the Contracting Officer with information listed in 6 FAH-2 H132 Exhibit H-132.1 .

c. The Contracting Officer who has been assigned the ratification action, after determining the proper information has been provided, shall prepare and execute a recommendation to the ratifying official to either approve or disapprove the ratification.

d. The recommendation shall include the facts and circumstances regarding the unauthorized commitment.

6 FAH-2 H-133 THROUGH H-139 UNASSIGNED

6 FAH-2 H-132 Exhibit H-132.1
REQUIREMENTS OFFICE STATEMENT
RATIFICATION REQUEST FOR AN
UNAUTHORIZED COMMITMENT

(TL: CORH-1; 08-21-1997)

- (1) Description of the unauthorized commitment.
- (2) A complete written, signed statement of the facts, including why normal acquisition procedures were not followed.
- (3) Why and how the contractor was selected.
- (4) A list of other sources considered.
- (5) A description of the work performed or the products delivered by the contractor.
- (6) A statement regarding the status of performance.
- (7) An estimated or agreed contract price.
- (8) Certified funding citations.
- (9) What benefit the U.S. Government has received as a result of the unauthorized commitment.
- (10) Why the action should be ratified as opposed to holding the employee who made the unauthorized commitment personally liable for the amount involved.
- (11) A statement from the cognizant management official from the office which employed the individual who made the unauthorized commitment detailing actions that he or she will take to ensure that such commitments will not occur again under the same or similar circumstances.